

01.09.2021
Sl. No.16
CP

W.P.A. No. 13014 of 2021
Anajana Mondal (Sarkar)
Vs.
The State of West Bengal & Ors.

Mr. S. Ray,
Mr. Ashok Kumar Jha

...for the Petitioner.

Mr. Lalit Mohan Mahata,
Mr. Supratim Dhar

...for the State.

Mr. Jay Chakraborty

.....for the private respondents 7 to 14.

The petitioner is the Pradhan of Uttar Panchanandapur-II Gram Panchayat, Kaliachak-II Block, District-Malda. The petitioner is aggrieved by the notice under Form 1E of sub-rule (2) of Rule 5B of the West Bengal Panchayat (Constitution) Rules, 1975 dated August 12, 2021 by which the prescribed authority fixed August 25, 2021 as the date for holding the meeting for removal of the Pradhan.

This Court is of the opinion that the requisition of March 2, 2021 cannot be revived and the meeting cannot be held in violation of the statutory period prescribed by Sections 12(3), 12(4) and 12(10) of the West Bengal Panchayat Act, 1973. The meeting scheduled to be held on August 25, 2021 is set aside.

This Court is of the further opinion that the requisitionists cannot be faulted because the prescribed authority did not hold the meeting at the relevant point

of time because of surge in Covid-19 cases. It also appears that the prescribed authority has kept on postponing the meeting without assigning any reason. This action on the part of the prescribed authority has caused injustice and frustrated the democratic rights of the requisitionists.

These institutions must run on democratic principles. In democracy all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. In my opinion, the provision for removing an elected representative such as the Pradhan is of fundamental importance to ensure the democratic functioning of the institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives.

Reliance is placed on the *decision of Ujjwal Kumar Singha vs. State of West Bengal & Ors.* reported in **(2017) 2 CHN 258** it was held that:

“5. The entire impugned judgment and order is supported with cogent reasons and there is no palpable infirmity noticed therein which would warrant any interference in an Intra-Court Madamus Appeal. It appears that the appellant/writ petitioners resorted to taking shelter under the high prerogative jurisdiction of the High Court under Article 226 of the Constitution of India only for the purpose of thwarting the well-established democratic principles which govern the running of public institutions such as a Gram Panchayat, being at the lowest tier of self-governance at the village level in the three-tier Panchayati Raj System. In this context, one may take notice of the observations made by the court in Farida Bibi v.

The State of West Bengal reported in 2016 (5) CHN (Cal) 258, while following the observations made by the Supreme Court in Usha Bharti v. State of U.P. reported in (2014) 7 SCC 663: AIR 2014 SC 1686, wherein it was observed to the effect that it is the fundamental right of democracy that those who have been elected can also be removed by expressing, 'No Confidence Motion' for the elected person. In an institution which runs on democratic principles, a person can continue to be its head so long he/she enjoys the confidence of the persons who comprised such a body. This is the essence of democratic republicanism which was taken note of by the Supreme Court in Usha Bharti (supra).

6. The appeal has no merit and is liable to be dismissed along with the application for stay with exemplary costs assessed at 500 G.Ms. which shall be deposited with the State Legal Services Authority for being earmarked for utilization by the Mediation and Conciliation Committee of the High Court."

This writ petition is disposed of with liberty to the requisitionists to bring a fresh requisition in terms of Section 12(2) of the said Act. If such requisition is brought, the prescribed authority shall satisfy himself about compliance of Section 12(2) of the said Act and then act and proceed in terms of Sections 12(3) and 12(4) onwards to reach the requisitions to its logical conclusion within the period mentioned in the statute. The bar under Section 12(11) shall not be applicable.

This Court is not making any observation on the right of the Pradhan to continue in his office as the said issue will be decided in the meeting itself. If necessary, the prescribed authority may seek police protection, which shall be rendered without any delay or laches on the part of the police authorities. In addition to the

modes of service required by the statute, the requisitionist shall be at liberty to paste the requisition at a conspicuous place in the office of the Pradhan and also at a residence of the Pradhan.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the learned advocates' communication.

(Shampa Sarkar, J.)